

1 used to coach at Mount Vernon.

2 Q. So he coordinated the -- Coach Daubenmire
3 coordinated this rally on the Square; is that right?

4 A. To my understanding, yes.

5 Q. Did you help him in any way to organize
6 the event?

7 A. No.

8 Q. Did you try to find folks to come to
9 attend the event?

10 A. No.

11 Q. You didn't do anything to pass the word
12 out that this rally on the Square is going to take
13 place.

14 A. No.

15 Q. Okay. What was the purpose of the rally?
16 Why did Coach Daubenmire decide to hold this rally?

17 A. A phone call from me.

18 Q. So you asked him to do it.

19 A. I didn't ask him to do it. I was just
20 communicating to him about what took place on April
21 16th.

22 Q. And when you say that, April 16th, tell
23 me what happened on that date.

24 A. That was the day that Mr. -- my

1 administration, Mr. White came into my room and he
2 asked me to remove my Bible from my desk.

3 Q. Okay. And then you sometime that day,
4 you told this to David Daubenmire; is that right?

5 A. Yes.

6 Q. And you called him?

7 A. Yes, I called him.

8 Q. And you told him what? What did you tell
9 Dave Daubenmire?

10 A. I can't give you exact words what was
11 said there, sir.

12 Q. Well, just the -- what was the subject or
13 the purpose? Obviously you told him the school
14 district had told you to remove your Bible.

15 A. Yes.

16 Q. And you told him that you didn't feel
17 that was right, I assume?

18 A. From everything he taught me, yes.

19 Q. And how is he teaching you things? Is he
20 one of your ministers?

21 A. No. He was a teacher of a class at the
22 Nazarene college I took.

23 Q. Just one class that you had with David
24 Daubenmire?

1 A. I had several. I had I think two classes
2 with him.

3 Q. And what were these classes about?

4 A. It was -- the title of the one was
5 religion, it was Religion in the Classroom I do
6 believe.

7 Q. And what was the second one?

8 A. You'd have to look at my record on that,
9 it's probably in the school record on that because it
10 was -- they were -- the school paid for it --

11 Q. Okay.

12 A. -- and suggested these classes.

13 Q. You don't remember the subject area of
14 that second class.

15 A. No, I don't.

16 Q. Did it also deal somehow with religion in
17 the classroom?

18 A. I don't remember, sir.

19 Q. The class that you did take on religion
20 in the classroom, what was taught there?

21 A. I don't remember what was all -- you can
22 ask Coach on that.

23 Q. Okay. Was the purpose of the class to
24 teach you what you can and cannot teach in regards to

1 religion in a classroom?

2 A. It was religion in the classroom. I'm
3 not going to try to recall what, three years ago or
4 four years ago I took it, what was -- it was religion
5 in the classroom as a teacher and related to religion
6 for teachers in the classroom.

7 Q. Okay. Was one of the topics about what
8 you cannot do in terms of teaching religion in a
9 classroom?

10 A. Yeah. Oh, yes.

11 Q. Okay. And one of the topics is then what
12 you can do in a public classroom in terms of teaching
13 religion.

14 A. Yes.

15 Q. And as part of that class, the curriculum
16 I assume would have discussed what was permitted,
17 correct?

18 A. Yes.

19 Q. And the curriculum also would have
20 discussed what was prohibited, correct?

21 A. Yes.

22 Q. And so as part of that class Coach
23 Daubenmire would have talked about different
24 particular things that teachers could or could not do

1 in a public classroom; is that right?

2 A. Yes.

3 Q. Do you still have the course syllabus or
4 materials from that class?

5 A. No. I don't have -- well, no.

6 Q. Was there a particular textbook that
7 Mr. Daubenmire used?

8 A. Yeah, there was a textbook that went with
9 that. Yes.

10 Q. Do you still have that textbook?

11 A. I don't remember, sir.

12 Q. Is there any reason you would have thrown
13 it away?

14 A. If it was in my classroom at the school,
15 it might have got thrown away, okay?

16 Q. You remember having it in your classroom
17 at school.

18 A. I do not remember. I'm saying if it was
19 in my classroom, it could have gotten thrown away. I
20 do not know.

21 Q. Do you recall actually keeping that book
22 in your classroom as opposed to keeping it at home?

23 A. No, I do not.

24 Q. Okay. Does Coach Daubenmire still teach

1 that course at Mount Vernon Nazarene College?

2 A. I don't know.

3 Q. And when did you take that class?

4 A. You're going to have to -- you'll have to
5 look in my records on that, I'm not going to try to
6 pin that one. I mean, it was in 2000.

7 Q. In the 2000s you mean?

8 A. In the 2000s, yeah. It was in the 2000s.

9 Q. In this decade.

10 A. Yes.

11 Q. But you don't recall whether it was,
12 let's say before 2005 or after 2005.

13 A. It was after 2004 I think it's safe to
14 say.

15 Q. Both classes were after 2004?

16 A. I'm not sure of that.

17 Q. Okay. But the Religion in the Classroom
18 class, you remember that one being after 2004.

19 A. Yes.

20 Q. Okay. You mentioned that you applied to
21 the Mount Vernon City Schools for them to pay for
22 these classes; is that right?

23 A. Yes.

24 Q. And so the school district authorized you

1 to take the classes and they also paid for your
2 tuition.

3 A. They sent a memo out or an e-mail out and
4 then after you take the class, you get reimbursed,
5 yes.

6 Q. So the memo was to you approving you to
7 take the class?

8 A. Oh, all teachers had the -- get the memo.

9 Q. Okay. So a broadcast e-mail goes out to
10 all teachers --

11 A. Correct.

12 Q. -- saying these are classes you that are
13 approved you can take, if you do take them, we'll
14 reimburse you.

15 A. Yeah. If the money is there, yes.

16 Q. Okay. So there's a full gamut of
17 different types of classes that you could take that
18 the school district would pay for?

19 A. Yes.

20 Q. And they just include those all in that
21 broadcast e-mail that they send out to the teachers?

22 A. Yes.

23 Q. Were the only two classes that you took
24 taking advantage of this the two classes we just

1 talked about?

2 A. No. I've taken, over the years, more
3 classes at the Naz.

4 Q. Okay.

5 A. Yes, there's others.

6 Q. What were those classes?

7 A. They're in my file. I don't know.

8 Q. Is it fair to say they all related
9 somehow to religion?

10 A. No. No.

11 Q. Okay. Some of them related to religion?

12 A. Maybe only that one. I don't know, sir.

13 Q. Do you recall the subject matter of any
14 of the others?

15 A. No. No. Well -- no.

16 Q. And you're telling me that those classes
17 would be listed in your personnel records --

18 A. Yes.

19 Q. -- with the Mount Vernon City Schools.

20 A. Yes.

21 Q. Okay. Let's get back to this April
22 16th. You called Coach Daubenmire, right?

23 A. Yes.

24 Q. And you tell him these things we already

1 talked about; is that right?

2 A. Uh-huh.

3 Q. You have to say "yes."

4 A. Yes.

5 Q. And then what was his reaction or his
6 response?

7 A. He asked me if I would be available after
8 school to talk with him, and I said "Yes."

9 Q. So you called him I guess shortly after
10 meeting sometime --

11 A. Yes.

12 Q. Lunchtime?

13 A. That would be fair to say.

14 Q. And he asked you if you were available
15 after school.

16 A. Yes.

17 Q. And then I take it you met with Coach
18 Daubenmire.

19 A. Yes.

20 Q. Where did you meet?

21 A. The parking lot at Smith Hardware Store I
22 believe that would be.

23 Q. Does Coach Daubenmire still live in Mount
24 Vernon, or did he at that time I should ask?

1 A. No.

2 Q. And then was it just the two of you that
3 met at that parking lot?

4 A. My wife came shortly afterwards.

5 Q. And that's it, the three of you.

6 A. Yes.

7 Q. What did you discuss in that meeting?

8 A. About what took place at school that day.

9 Q. And what did Coach Daubenmire advise you
10 or suggest that you should do or what should be done?

11 A. He said, "Let's walk up to the Square."
12 He handed me a paper and said, "Look at this paper,"
13 and I read through it, do I agree with it after
14 reading through it very quickly. I said I agreed
15 with the information on there. Turned the corner
16 around the bank there and saw a large crowd up there,
17 which kind of surprised me.

18 Q. So Coach Daubenmire had obviously
19 arranged things already for people to be there at the
20 Square.

21 A. Yes.

22 Q. And he had not told you that when he met
23 you initially. Or maybe I should --

24 A. The parking lot there -- I think he might

1 have said there might be some people up there. I'm
2 not quite sure the conversation in that parking lot,
3 sir.

4 Q. But you understood there would be some
5 people there, right?

6 A. Yeah, he contacted some people. Yes.

7 Q. And I guess your surprise was you didn't
8 know there would be that many people.

9 A. The number.

10 Q. Okay. When you talked to Coach
11 Daubenmire earlier that day on the 16th at
12 lunchtime or whenever it was, did he ask you to try
13 to find people to come to the Square?

14 A. No.

15 Q. Your wife attended the rally on the
16 Square?

17 A. Yes. Yes, she walked up with me. Yes.

18 Q. Any other family members?

19 A. No. My daughter was having a softball
20 game that day, so in the back of my mind I'm
21 thinking, I want to go watch her play softball. She
22 wasn't there, obviously.

23 Q. Coach Daubenmire handed you this paper.
24 Did he know -- did you know he was going to show you

1 a paper based on your conversation earlier in the
2 day?

3 A. I don't remember, sir.

4 Q. What was that paper?

5 A. It was the paper that I read on the
6 Square.

7 Q. So he had typed up a statement for you to
8 read; is that right?

9 A. Yes.

10 Q. Okay. And so you reviewed it before you
11 read it.

12 A. Yeah, as we were kind of walking and
13 talking. Yes.

14 Q. And you already told us you agreed with
15 what was on that paper.

16 A. After reading it very quickly and
17 briefly, yes.

18 Q. Okay. And then you read that paper on
19 the Square, correct?

20 A. Yes.

21 Q. And Coach Daubenmire also made a speech
22 on the Square.

23 A. I found out later he did, yes. I left.
24 I went to a softball game.

1 Q. So tell me the chronology of events at
2 this rally on the Square. What happened when you and
3 the coach and your wife first got there?

4 A. Went right to the middle of the Square, a
5 fairly large group of people there, I said hello to a
6 few people I knew, you know, I knew some people there
7 so I shook hands or said hello or very brief
8 conversations, I read the script, and I said, "I'm
9 going to a softball game."

10 Q. Did Coach Daubenmire introduce you first?

11 A. You'd have to ask him. I don't remember.
12 I don't remember for sure.

13 Q. And so you read your statement and then
14 you announced that you were leaving for the softball
15 game.

16 A. Yes.

17 Q. Did your wife leave with you?

18 A. Yes. Oh, yeah.

19 Q. But Coach Daubenmire and others remained
20 on the Square for some period of time.

21 A. From what I hear -- after, I heard --
22 yes.

23 Q. Right. And after the fact you heard that
24 Coach Daubenmire also made some speech there on the

1 Square.

2 A. Can you repeat that?

3 Q. After the fact you came to learn that --

4 A. Yes.

5 Q. -- Coach Daubenmire also made a speech?

6 A. Yes.

7 Q. Did you have counsel there with you at
8 the Square?

9 A. My counsel was Coach Dave Daubenmire.

10 Q. Legal counsel is what I'm asking.

11 A. Oh, legal counsel? No.

12 Q. And what was the statement that you read,
13 to the best of your recollection?

14 A. Obviously had something about the Bible
15 being on my desk. I had a constitutional right to
16 leave it sitting on my desk. That's all I . . .

17 Q. Do you still have that paper?

18 A. All my documents I've turned over so I
19 don't know.

20 Q. Okay. So you had it before and you gave
21 it to counsel.

22 A. Yes.

23 Q. The thrust of the message that you read
24 was that it was unfair, in your view, that you were

1 being, I'll use the word "persecuted" for having a
2 Bible on your desk?

3 A. I don't like the word "persecuted."

4 Q. Yeah, that's a bad word.

5 A. Pick another one there.

6 Q. Okay. I'll rephrase that.

7 A. That's fine.

8 Q. The thrust of the message that you read
9 that day on the Square was your objection that the
10 school had issues with you because you had a Bible on
11 your desk.

12 A. I would have to go back and look at the
13 document. I guess I don't feel comfortable in trying
14 to remember what the document said exactly, sir.

15 Q. Okay. That's fair.

16 A. If you had the document, I would look at
17 the document. I don't know if you have it or not.

18 Q. We'll try to find that later. I'm not
19 sure we have it.

20 A. That's fine.

21 MR. HAMILTON: Do you want to take a
22 break and find it? We've been going an hour and 20.

23 MR. MANSFIELD: Sure, we can do that.

24 (Recess taken, 10:49 to 11:02 a.m.)

1 MR. MANSFIELD: Back on the record here.

2 Q. Mr. Freshwater, before we took a break we
3 were talking about the rally on the Square, and I'm
4 going to hand you a few documents to see if we can't
5 figure out the chronology here.

6 MR. MANSFIELD: Could you mark this
7 Exhibit 1, please.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Mr. Freshwater, I'm handing you what has
10 been marked as Deposition Exhibit 1. Take a minute
11 to look at that for me, please.

12 A. Do you want me to read through it?

13 Q. Well, let me ask you, you're familiar
14 with this letter?

15 A. Yes.

16 Q. And that's the letter that was given to
17 you by Bill White, your principal at the school; is
18 that right?

19 A. Yes, in a meeting I received this. Yes.

20 Q. And the letter is dated April 7th,
21 2008. Do you see that?

22 A. Yes.

23 Q. And the meeting was on April 7th, 2008;
24 is that right?

1 A. Yes. Since it says April 7th here,
2 yes, I would assume so.

3 Q. And where did Mr. White meet with you on
4 that date?

5 A. That would be in his office.

6 Q. He called you into his office?

7 A. I don't know if it was a phone call or an
8 e-mail. I was contacted from him, sir.

9 Q. Was anybody else in the office with you
10 and Mr. White?

11 A. I do believe it was Mr. White and myself,
12 from what I remember, Steve Short. Superintendent
13 Steve Short from what I remember.

14 Q. You recall him being there in the April
15 7th meeting?

16 A. I'm not going to -- I'm not going to --

17 Q. You're not going to swear to it.

18 A. Yeah. I'm not 100 percent certain.

19 Q. Okay. That's fine. This letter outlines
20 two general topics, right? One is issues with you
21 concerning the Fellowship of Christian Athletes, and
22 the second being a Bible on your desk; is that right?

23 A. Yeah. Can I look at this real quickly?

24 Q. Sure.

1 A. Because I remember reading this many
2 times at the time, when I see this it's like yeah,
3 I've read this many times, but let me refresh.

4 Q. Why don't you read it first and then tell
5 me --

6 A. Can I read the whole thing now?

7 Q. Yeah, you may read it, and then tell me
8 when you're finished.

9 A. Is it okay if I mark on this?

10 Q. Not on that exhibit, no.

11 A. All right. Okay, sir.

12 MR. MANSFIELD: Mark that.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Freshwater, let me also hand you what
15 we've just marked as Freshwater Deposition Exhibit
16 No. 2 as well. Why don't you take a second to look
17 at that one.

18 A. Okay.

19 Q. You've had a chance to read both those
20 letters?

21 A. Yeah. Very quickly, but yes.

22 Q. Okay. I want to make sure we all
23 understand the chronology here. On April 7th,
24 2008, Mr. White gave you that letter that we've

1 marked as Exhibit 1; is that correct?

2 A. Yes.

3 Q. And do you recall specifically meeting
4 with Mr. White on April 7th, 2008?

5 A. Yes.

6 Q. So he called you into his office and he
7 handed you this letter.

8 A. Somehow he communicated to me to come to
9 the office, yes.

10 Q. And then when you were in his office, you
11 read this letter, correct?

12 A. There was a lot of communications and I
13 was reading when he handed it to me.

14 Q. Okay.

15 A. Yes.

16 Q. But you and he discussed this letter on
17 April 7th, 2008, in his office.

18 A. Very quickly. Like I said, there was a
19 lot of discussion. I would assume that I read it in
20 there with him -- with him also.

21 Q. Okay. Fair enough.

22 A. Dialogue between the two of us, yes.

23 Q. And that dialogue was about the two
24 topics that are outlined in this letter, correct, one

1 is the FCA issue and the second is religious
2 materials in the classroom?

3 A. I would assume so, yes.

4 Q. The second issue here that's on the
5 second page of Exhibit 1 is the issue we've been
6 talking about a little bit already today which is
7 about the Bible being on your desk, correct?

8 A. Yes, sir.

9 Q. And what do you recall Mr. White telling
10 you about the Bible being on the desk?

11 A. I would assume that it was about this
12 right here, what's stated here.

13 Q. Mr. White asked you or told you that you
14 need to remove the Bible from your desk?

15 A. Yes, that's what it's saying here. Yes.

16 Q. And he also told you that you needed to
17 remove other religious materials that were in your
18 classroom as well, correct?

19 A. With regard to religious materials in the
20 classroom, "While you certainly may read your bible
21 on your on, duty free time . . . it cannot be sitting
22 out on your desk when students are in the classroom."
23 "As for the 10 Commandments" -- again, he's talking
24 about the Ten Commandments here and the Bible.

1 Q. And you did have a Bible on your desk,
2 correct?

3 A. That is correct, sir.

4 Q. In fact, I assume it's the same Bible
5 that is sitting in front of you here today.

6 A. That would be correct, sir.

7 Q. You kept that Bible out on, was it the
8 corner of your desk?

9 A. Yes.

10 Q. And you kept that out there on a daily
11 basis during the school year.

12 A. Twenty-one years worth, yes.

13 Q. And you also had some other religious
14 posters, these Ten Commandments posters and things of
15 that nature at various places in your classroom; is
16 that right?

17 A. They were -- yeah, they were book -- I'm
18 just listening to your words. They were book covers,
19 sir.

20 Q. Book covers?

21 A. Book covers, yes.

22 Q. We'll call them book covers or whatever
23 you want to call them, but there was a Ten
24 Commandments book cover that appeared I think in

1 three different places in your classroom; is that
2 correct?

3 A. Yeah, four -- three different places. I
4 mean --

5 Q. You tell me. I've seen references and,
6 you know, as we've gone through these proceedings
7 that there were three different, some people referred
8 to them as posters and you're referring to them as
9 book covers, but three different lists of the Ten
10 Commandments that appeared in your classroom
11 somewhere. For example, there was one on the back of
12 your classroom door; is that right?

13 A. No, that was -- I'm trying to think what
14 was there. My standards was there and Einstein was
15 there.

16 Q. Where did you have the Ten Commandments
17 book covers in your classroom?

18 A. The book covers were beside the door in
19 the window for security purposes.

20 Q. Okay. Covering the glass?

21 A. Yes.

22 Q. Okay.

23 A. Yes.

24 Q. And so there was one on either side of

1 the door covering glass?

2 A. There was just one series of windows
3 there beside the door.

4 Q. So the windows were only one side of the
5 door, not the other side of the door.

6 A. Correct.

7 Q. Okay. And you said the Ten Commandments
8 book cover was on either side of the door. What did
9 you mean by that?

10 A. I misspoke then.

11 Q. Okay. So one place in the classroom
12 where the Ten Commandments list was was on this
13 window next to your door, correct?

14 A. Yes.

15 Q. And where else was it in your classroom?

16 A. That's the only place I can recall right
17 now that they were at.

18 Q. Do you recall there being a Ten
19 Commandments posted on your bulletin board below a
20 picture of President Bush?

21 A. You're talking about my patriotic picture
22 poster there?

23 Q. Correct.

24 A. Yeah, there may have been one there.

1 Yes, sir.

2 Q. So there's one in the window and then one
3 under that patriotic poster on the bulletin board.

4 A. There was more than one in the window.
5 There was three --

6 Q. Okay.

7 A. -- in the window covering the window for
8 security purposes, and then there may have been one
9 over there on the poster, on the bulletin board.

10 Q. So three different Ten Commandments lists
11 that were on the window; is that right?

12 A. Yeah. You brought in the word "list."

13 Q. I'll call it book cover.

14 A. You used the word "list" there. I'm
15 trying to figure out what you mean by "list."

16 Q. Let me start over. The Ten Commandments,
17 obviously there's Ten Commandments, correct?

18 A. Yeah.

19 Q. I'm calling that a list, a list of the
20 Ten Commandments.

21 A. Okay.

22 Q. So there were three different book covers
23 that had the Ten Commandments on them that were on
24 that window next to your door.

1 A. But there was other things on that book
2 cover, so you continue to say --

3 Q. Okay.

4 A. There is some motivational sayings
5 from --

6 Q. Okay. We'll talk about that a little
7 later.

8 A. Okay.

9 Q. Right now all I'm trying to figure out is
10 there were -- the Ten Commandments were repeated
11 three times in some fashion --

12 A. There's three book covers up there.
13 There's three book covers up there.

14 Q. And each of those book covers had the Ten
15 Commandments on them.

16 A. Yes. Yes.

17 Q. And then you recall that there was likely
18 the Ten Commandments that also appeared on the
19 bulletin board underneath the patriotic poster.

20 A. Yes.

21 Q. And those posters were up during the
22 2007-2008 school year, correct?

23 A. Yes.

24 Q. How long had they been up before then?

1 A. When did the administration give those to
2 me? I'll say five, no, even more than that. Nine
3 years. I'll say nine years on that, sir.

4 Q. And you say that the administration gave
5 you those --

6 A. They were down in the office; yes, the
7 administration.

8 Q. And how did they give them to you?

9 A. That was nine years ago. I don't
10 remember.

11 Q. Well, you said the administration gave
12 them to you. I want to know how they happened to
13 give them --

14 A. Oh, they usually have them downstairs.
15 Guidance counselors usually have the book covers
16 downstairs for teachers' availability to give the
17 students.

18 Q. Okay. These are book covers that you
19 could hand out to students to use to protect their
20 books?

21 A. To my understanding, yes.

22 Q. And they're available down in the
23 guidance counselor's office.

24 A. Down in the guidance counselor's office.

1 Q. Did someone actually give them to you or
2 they were made available and you went down and got
3 them?

4 A. I don't remember, sir.

5 Q. You don't actually remember someone in
6 the administration coming up to your classroom and
7 handing these things to you, do you?

8 A. I do not -- I don't remember, sir.

9 Q. Okay.

10 MR. DESCHLER: I just want to clarify
11 something; this is on your question.

12 Do you not remember whether they were
13 given to you by administration, or do you not
14 remember -- or you can't remember whether you got
15 them from the administration or --

16 THE WITNESS: No; I got them from
17 administration. I remember I got them from
18 administration.

19 MR. DESCHLER: I just wanted to clarify
20 what you, because you asked it sort of --

21 MR. MANSFIELD: Yeah, okay.

22 Q. You don't remember as you sit here today,
23 you can't recall anybody from administration actually
24 physically giving you those book covers, correct?

1 A. I do not remember.

2 Q. So my statement is correct.

3 A. Yes.

4 Q. Okay. What you know as you sit here
5 today is that those book covers were available in the
6 guidance counselor's office, correct?

7 A. Yes.

8 Q. And any teacher could go down there and
9 take one or more of those book covers if you wanted
10 to.

11 A. Yeah. If they're in the office down
12 there, yes.

13 Q. So more than likely that's how you
14 obtained those book covers, isn't it?

15 A. Right.

16 Q. You would have gone down to the guidance
17 counselor's office and picked one or more of them up.

18 A. Yes.

19 Q. Okay. If you take a look at Exhibit 2
20 for a second here, actually, before I get to that,
21 when Mr. White and you were discussing the letter
22 that's in Exhibit 1, he relayed to you that there
23 were issues with the FCA and there were issues with
24 religious items in your classroom, correct?

1 A. Can you repeat that again?

2 Q. When you and Mr. White were discussing
3 this letter that he gave to you --

4 A. Yes.

5 Q. -- which we've marked as Exhibit 1, you
6 and he discussed the fact that the school had issues
7 both with your conduct at FCA and with the use of
8 religious items in your classroom, correct?

9 A. Yes.

10 Q. Okay. Mr. White told you you needed to
11 remove the Bible from your desk.

12 A. Yeah, in the document here. Yes.

13 Q. What was your response?

14 A. Confusion. I'll try to give you the best
15 response, I was definitely confused. I guess that's
16 the best way I can . . .

17 Q. Did you tell him that you would comply or
18 that you wouldn't comply?

19 A. I remember walking out of the meeting
20 being confused.

21 Q. Did he give you a directive when you left
22 that meeting like it has to be removed?

23 A. Oh, no. No.

24 Q. Okay.

1 A. No, there was no deadline or anything
2 like that. No.

3 Q. He had just simply told you you need to
4 remove it from your desk.

5 A. Yes.

6 Q. That's on April 7th. Do you recall
7 contacting Coach Daubenmire about this issue --

8 A. No.

9 Q. -- on April 7th?

10 A. No. No.

11 Q. Okay. If you look at Exhibit 2, this is
12 a letter that Mr. White gave to you on April 14th,
13 2008; is that correct?

14 A. That would be correct, sir.

15 Q. And you actually signed there at the
16 bottom acknowledging receipt of that letter.

17 A. Yes, I did.

18 Q. How did Mr. White give this letter to
19 you? In other words, did he call you into the office
20 again somehow?

21 A. I'm just trying to recall the way the
22 events was. There was a meeting between these.

23 Q. Right. This exhibit --

24 A. April -- I'm trying to recall the time

1 line here, or days. April 11th --

2 Q. Right.

3 A. -- I had a meeting with Mr. White,
4 informal, formal, I don't know, but it was in the
5 copy room.

6 Q. Okay.

7 A. Because of the confusion from April
8 7th. I remember we -- he's hard -- he's hard to
9 track down, okay. April 11th, if I recall
10 correctly, is a Friday, and we had a meeting in the
11 copy room that helped the confusion from this letter.

12 Q. Was this just a meeting by happenstance?

13 A. I'm glad it did happen, okay, because it
14 cleared up the confusion on this one.

15 Q. When you --

16 A. Because he said to remove the Bible here,
17 let me look at it again. Yeah. And at the 11th
18 meeting he said, he goes, "I meant Bibles," and he
19 clarified it with the FCA Bibles that were in the
20 back of the room.

21 Q. So in your meeting on April 11th, this
22 was just a meeting by chance, right? You happened to
23 run into him in the copy room?

24 A. Well, it was a good -- I was down there

1 copying some things off, but I had all intentions of
2 connecting up with him.

3 Q. All right.

4 A. So I didn't try to avoid him. I didn't
5 try -- it was like Whoa, I've got an opportunity,
6 here he is, let's talk, that type of thing.

7 Q. Okay. At that meeting he told you -- he
8 clarified what he meant about the Bibles.

9 A. The Bible, that it was Bibles.

10 Q. Okay. So actually in the first meeting
11 you understood it just to be the one Bible on your
12 desk.

13 A. Yes. And that's why I was confused
14 there. And he said now I'm dealing with Bibles. I
15 said, "Oh, I have no problem" -- I'm not sure what
16 exactly I said, but it was like, "Yeah, I can take
17 care of that."

18 Q. And what did you understand him to mean
19 when he said "Bibles" on April 11th?

20 A. The Bibles in the back of the room for
21 FCA.

22 Q. Did you understand from your conversation
23 with him on April 11th that there was not an issue
24 with the Bible on your desk, only an issue with the

1 FCA Bibles in the back of your room?

2 A. Yeah, on that conversation we had on
3 April 11th, yes.

4 Q. So leaving that conversation on April
5 11th you understood, well, in your mind you thought
6 that you were allowed to keep the Bible on your desk.

7 A. Yes.

8 Q. But that you had to remove the FCA Bibles
9 that were in the back of your room.

10 A. That is correct.

11 Q. And tell me about those FCA Bibles; where
12 were they?

13 A. Back of the room in the corner.

14 Q. In a box?

15 A. Yes.

16 Q. In a bag, too?

17 A. I recall a box.

18 Q. Okay. Were they -- was that box open on
19 the top so you could see in?

20 A. I don't -- they were FCA -- I don't know.

21 Q. How long had they been there in your
22 classroom?

23 A. When did the students bring those in, or
24 whoever brought them in I should say? Three, I'll

1 say three years.

2 Q. Okay.

3 A. Four years. Three, four years, sir.

4 Q. How did you get those Bibles?

5 MR. HAMILTON: Do you mean he himself or
6 the FCA?

7 MR. MANSFIELD: He himself.

8 A. Oh, FCA brought them in. It wasn't -- I
9 didn't bring them in, sir.

10 Q. How did you end up having them in your
11 classroom, let me ask it that way?

12 A. I don't remember all that transaction
13 three, four years ago. I don't know how that -- they
14 just -- students brought them in. I don't recall
15 that whole transition. They came in -- I don't
16 remember, sir.

17 Q. Do you recall -- these Bibles were all
18 the same book, correct? The same version of the
19 Bible.

20 A. I didn't dig all the way down through
21 those boxes so I don't know.

22 Q. I assume they were all new Bibles.

23 A. I don't know. I didn't go down through
24 them all. I don't know.

1 Q. Well, the ones you saw, they were all
2 similar, new Bibles?

3 A. Yes.

4 Q. And what you told me is that some student
5 in FCA had brought those Bibles in for FCA.

6 A. Yes.

7 Q. Okay. And did that student bring them to
8 your classroom when they gave them to you or did they
9 bring them to an FCA meeting?

10 A. They brought them -- they may have gone
11 through the office with it, I'm not sure the routing
12 of it, but I don't recall how it routed to get
13 back -- my room is the FCA room.

14 Q. Okay.

15 A. I'm the supervisor or monitor I would
16 say.

17 Q. So FCA meetings are held --

18 A. Yes.

19 Q. -- were held in your classroom.

20 A. Yes.

21 Q. So, obviously, those Bibles would have
22 been brought to your room during an FCA meeting.

23 A. Yes.

24 Q. And what did you intend to do with those

1 Bibles?

2 A. I didn't intend to do anything with them.
3 They were for the students.

4 Q. Okay. But were they to be made available
5 to students at FCA meetings?

6 A. If the students chose to, yes.

7 Q. And the Bibles were, nonetheless, stored
8 in your room because your room was the FCA meeting
9 room.

10 A. That's correct.

11 Q. In 2007-2008 when Mr. White, I guess it
12 was on April 11th roughly when he told you to
13 remove those Bibles, do you recall how many of them
14 were in that box, approximately?

15 A. No, sir.

16 Q. You had mentioned before that you recall
17 that they had been in your classroom roughly three
18 years.

19 A. Three, I'll say three to four years.

20 Q. Do you know how many had been passed out
21 to students or how many students had taken one during
22 those FCA meetings over the years?

23 A. I don't remember, sir.

24 Q. Do you recall there being more initially

1 when you got them than there were as of April 11th,
2 2007?

3 A. I would assume that, yes.

4 Q. So during that three-year period students
5 would take Bibles from time to time.

6 A. Yes.

7 Q. Okay. Did you ever pass out some of
8 those Bibles to students during FCA meetings?

9 A. Me?

10 Q. Yes.

11 A. No.

12 Q. How did students become aware of the fact
13 that there were Bibles in these boxes that were
14 available for them to take?

15 A. Probably from the student that brought
16 them in.

17 Q. Okay. That would have been true back in
18 the first year when that student was still with you
19 but not true the following few years when that
20 student had moved on, correct?

21 A. He passed the word around. They just
22 know that they're there. I don't know. I don't have
23 a good answer for you on that. I don't know.

24 Q. But you don't recall ever telling

1 students, I mean, "There's a box of Bibles, pass them
2 out to your friends if you'd like," or "They're
3 available, here they are," anything like that?

4 A. I don't say pass -- I mean, sir, they're
5 for FCA.

6 Q. Right. I mean, did you tell your
7 students "Here are the Bibles, they're for FCA, if
8 you want them, you can have them. Pass them out to
9 your friends if you'd like"?

10 A. I don't remember, sir.

11 Q. Do you deny saying something like that?

12 A. Say it again.

13 Q. Do you deny saying something like that?

14 A. I do not remember saying that.

15 Q. So it's possible that you would have told
16 students that, that they were available for them to
17 take.

18 A. I do not remember, sir.

19 Q. But that's possible, though, isn't it?

20 A. I don't remember, sir.

21 Q. On April 11th after this meeting with
22 Mr. White you understood, I think you told me a
23 minute ago, that you were allowed to keep your
24 personal Bible on the desk. Was that your

1 understanding?

2 A. I'm sorry, can you repeat that? I
3 apologize.

4 Q. Yeah.

5 MR. MANSFIELD: Could you read that back,
6 please.

7 (Record read.)

8 A. Yes.

9 Q. And then you have this next meeting on
10 April 14th; is that right?

11 A. Yeah, that was a meeting and a memo.
12 Yes.

13 Q. Right.

14 A. The document.

15 Q. And I think you already told me that that
16 was the meeting in Mr. White's office.

17 A. Yes. We talked about that April 7th
18 and April 14th from what I recall, it was in --
19 from what I remember, it was in his room, yes.

20 Q. I think you testified that April 11th
21 you recall being a Friday, so the 14th would have
22 been that following Monday; is that right?

23 A. Yes.

24 Q. And on the 14th Mr. White was telling

1 you you have to remove all Bibles from your
2 classroom; is that correct?

3 A. Yes. Bibles and other religious DVDs,
4 et cetera, yes.

5 Q. He was telling you to remove all
6 religious items, correct?

7 A. All religious items. I just see DVD,
8 other religious DVDs, video, et cetera.

9 Q. But he was telling you you need to remove
10 all religious items from the classroom by the end of
11 the day on April 16th, correct?

12 A. April 11th is when he asked me when can
13 I comply, and I said Wednesday, and that was April
14 16th.

15 Q. Okay. And so he was confirming that,
16 then, on Monday I guess following your conversation
17 on Friday, he was confirming this, and he had you
18 acknowledge this agreement by signing this letter
19 that's marked as Exhibit 2, and you had agreed that
20 you would then remove all those items by Wednesday,
21 April 16th; is that correct?

22 A. That's correct, yes.

23 Q. Okay. And so there were your personal
24 Bible and religious DVDs and videos and things of

1 that nature that you had in your classroom, you were
2 supposed to put those in cabinets, correct, so that
3 they wouldn't be visible to students?

4 A. Can you repeat that?

5 Q. Yeah. Your personal Bible, the religious
6 DVDs, and videos that were in your classroom,
7 Mr. White was asking you to put those in a cabinet or
8 somewhere out of sight and out of access by students.

9 A. No. It was Bibles. It wasn't my
10 personal Bible. It was Bibles.

11 Q. Okay. So here with this, as of April
12 14th, it was still your impression that you could
13 keep your personal Bible on your desk.

14 A. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. But that you had to remove all the other
18 Bibles out of sight; is that correct?

19 A. That's correct, yes.

20 Q. And you also had to remove the religious
21 DVDs and the videos and those things that were in
22 your room, you had to move those out of sight too,
23 correct?

24 A. Yeah, religious DVDs and videos. Yes.

1 Yes.

2 Q. Did you comply with that date?

3 A. No, because on April 11th we discussed
4 April 16th.

5 Q. Right. I'm asking did you comply with
6 April 16th? Did you remove all the materials by
7 April 16th?

8 A. Yes. Yes.

9 Q. So by April 16th the FCA Bibles that
10 were in the back of the classroom, you had put those
11 somewhere out of sight.

12 A. Yes.

13 Q. Okay. And the religious DVDs and videos
14 that were in your classroom, you had also put those
15 somewhere out of sight by April 16th, correct?

16 A. That would be correct, yes.

17 Q. And then the religious posters, book
18 covers that were on your wall, had you also removed
19 those by April 16th?

20 A. Yes. Yeah, the ones that were in the
21 window and there was one on the bulletin board. Yes.

22 Q. You had removed those as well by April
23 16th.

24 A. Yes.

1 Q. Okay. And I think I asked you this
2 before, if I did, I apologize, but all these items
3 had been in your classroom during the entire
4 2007-2008 school year up until the time you removed
5 them on April 16th out of sight.

6 A. Prior to that you said?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. So April 14th you have this
10 meeting with Mr. White, correct?

11 A. Yes.

12 Q. And then did you contact Mr. Daubenmire
13 on April 14th to tell him?

14 A. No.

15 Q. The rally on the Square was on April
16 16th I think you told us before.

17 A. That would be correct.

18 Q. And you don't recall talking to
19 Mr. Daubenmire on April 14th or April 15th.

20 A. I do not recall.

21 Q. Do you think you might be mistaken that
22 you actually talked to him on the 14th or 15th and
23 not on the 16th?

24 A. No.

1 Q. You mentioned before that you had another
2 meeting with Mr. White on the 16th and that was
3 what prompted you to call Mr. Daubenmire. Do you
4 recall that?

5 A. Yes.

6 Q. What was that meeting on the 16th?

7 A. Mr. White came up to my room on April
8 16th in the morning, he took a couple steps, one,
9 two steps into my room, I was at my computer chair
10 and he -- I remember him looking the room over. I
11 mean, I could see his head moving, I thought he
12 looked the room over.

13 Q. Was this during class hours?

14 A. No. This would be -- this would be a
15 free period. I don't remember any students being in
16 there.

17 Q. Okay.

18 A. Looking my classroom over and he stated
19 "Everything looks good." I just kind of mentioned --
20 from his viewpoint where he was at by the door he
21 could have seen my Bible over there, and I just kind
22 of, you know, "Hey, you know, it shouldn't matter or
23 anything, you know, just sitting there." He said it
24 was okay. So I just kind of mentioned, Hey. He seen

1 my Bible there.

2 And I remember the comment he made there
3 was, I'll say kind of struck me, put it that way, but
4 he said, "I'll have to get back with you on that."
5 And that was -- it was a pretty short conversation.
6 That was it. But I just remember that one kind of
7 struck me that, you know, I'm thinking, Well, why
8 would he make that comment.

9 Q. So he came into your room I assume to
10 inspect things to make sure that you had complied and
11 removed things --

12 A. Yes.

13 Q. -- by the 16th date.

14 A. Yes. I'm sorry.

15 Q. And he told you that everything looked
16 okay; is that correct?

17 A. Yes.

18 Q. And then you mentioned to him that, Hey,
19 I do have this Bible on my desk.

20 A. Yes.

21 Q. Is that what you're telling me?

22 A. Yeah.

23 Q. And he said, "I'll need to check into
24 that."

1 A. Yes.

2 Q. Okay. At lunchtime on that day, April
3 16th, you call Dave Daubenmire, correct?

4 A. That would be correct, yes.

5 Q. And you told Dave Daubenmire that the
6 school's requiring you to remove your Bible from the
7 desk, correct? That's what you told us before.

8 A. Yes.

9 Q. But on April 16th that wasn't true, was
10 it?

11 A. He came back in. Mr. White came back in
12 for a second meeting.

13 Q. On the 16th?

14 A. Yes. Yes.

15 Q. When was that?

16 A. At lunchtime. He came in at lunchtime.
17 Mr. White came back into my, yeah, he was back in my
18 room for the second time on April 16th.

19 Q. Okay. So he had gone and checked it out
20 whether you were allowed to keep the Bible on your
21 desk?

22 A. I would assume so.

23 Q. And then what did he tell you when he
24 came back in at lunchtime?

1 A. He told me that it needed to be removed
2 from my desk.

3 Q. And what was your response?

4 A. Obviously, surprised. Surprised.
5 Confused. I don't know what my -- I don't remember
6 my response right then.

7 Q. Did you intend to comply with his order
8 to remove the Bible?

9 A. I searched out who I would search out;
10 that was Daubenmire.

11 Q. So you called Dave Daubenmire for
12 guidance about what to do?

13 A. Yeah, I guess guidance would be, that
14 would be an okay word to use, I guess.

15 Q. Are you aware that Dave Daubenmire went
16 on the radio that afternoon of the 16th to announce
17 that you had a rally on the Square?

18 A. Afterwards, yes.

19 Q. You didn't hear his radio broadcast?

20 A. No. I guess I was in class then. I
21 assume I was in class.

22 Q. Did he tell you he was going to do that
23 during your conversation at lunch?

24 A. No.

1 Q. Do you know which radio station he
2 appeared on?

3 A. I don't know, sir.

4 Q. On April 16th after the second
5 conversation with Mr. White you were upset that the
6 school was telling you you had to remove your Bible
7 from the desk; is that fair to say?

8 A. I'm sorry, repeat.

9 Q. Yeah, on April 16th after the second
10 meeting with Mr. White you were upset with the school
11 that they had ordered you to remove your personal
12 Bible from your desk.

13 A. Yeah. I would say yes to that.

14 Q. And the request to remove the Bible from
15 your desk had nothing to do with the Does, correct?

16 A. Yes. It didn't have anything to do with
17 them.

18 Q. Right. They weren't the ones asking you
19 to remove the Bible from your desk, correct?

20 A. No.

21 Q. Is my statement correct?

22 A. Yes. Yes.

23 Q. Okay. The Does have testified, I think
24 you've heard, that they never had an issue with you

1 having a personal Bible on your desk. Have you heard
2 that testimony?

3 A. Yes, I've heard that. Yes.

4 Q. And you have no reason to believe that's
5 not true, do you?

6 A. No, I have no reason for that.

7 Q. So your beef with the Bible being on your
8 desk is a beef you have with the school district.

9 MR. HAMILTON: What is a beef?

10 Q. Your issue with the Bible, with the
11 request that the Bible be removed from your desk, is
12 an issue you have with the school district; is that
13 correct?

14 A. Yes.

15 Q. What did Mr. Daubenmire tell you that he
16 hoped to accomplish by having the rally?

17 A. You're going to have to ask him. I don't
18 know, sir.

19 Q. I'm sure he talked to you about the
20 rally, didn't he?

21 A. It took place very quickly.

22 Q. He didn't tell you what he hoped to
23 accomplish by this?

24 A. No.

1 Q. Did he tell you he was just trying to
2 rally support behind your cause?

3 A. I can assume that, yes.

4 MR. MANSFIELD: Go ahead and mark this.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Mr. Freshwater, let me hand you what
7 we've marked as Deposition Exhibit 3. Is this the
8 statement that you were referring to before that you
9 read at the rally on the Square?

10 A. Can I have a moment to look at it?

11 Q. Absolutely.

12 A. Okay, sir.

13 Q. This, what we've marked as Exhibit 3, is
14 the statement that you were referring to before that
15 you read at the rally on the Square?

16 A. From what I can remember, yes.

17 Q. And it's your testimony that you did not
18 draft this statement; is that correct?

19 A. That is correct.

20 Q. David Daubenmire drafted this statement
21 for you; is that correct?

22 A. You'll have to ask him, I don't know,
23 sir.

24 Q. In any event, he handed it to you to